

Disciplinary and Other NASD Actions

REPORTED FOR MARCH

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of February 2004.

Firms Fined, Individuals Sanctioned

Berry-Shino Securities, Inc. (CRD #38098, Scottsdale, Arizona) and Ralph Matthew Shino (CRD #1380293, Registered Principal, Scottsdale, Arizona) were fined \$52,500, jointly and severally, and Shino was suspended from association with any NASD member in any principal capacity for 10 business days. The sanctions were based on findings that the firm, acting through Shino, charged public customers excessive and unfair commissions on listed option transactions. The findings also stated that the commissions were greater than the amount of commission warranted by market conditions, the cost of executing the transactions, the value of services rendered to the customer by the firm, and other pertinent factors. In addition, NASD found that the firm, acting through Shino, accepted and executed, or caused the execution of, orders to purchase listed options in customer accounts without having obtained required information and documentation from the customers as required by NASD Conduct Rule 2860(B)(16)(A).

Shino's suspension began March 1, 2004, and concluded at the close of business March 12, 2004. (NASD Case #C3A030001)

Investment Management Corporation (CRD #37196, Bountiful, Utah) and Kevin Dee Kunz (CRD #1274540, Registered Principal, Fruit Heights, Utah) were fined \$28,753, jointly and severally. Kunz was suspended from association with any NASD member in any principal capacity for six months, barred from association with any NASD member firm as a financial and operations principal, and ordered to requalify in any principal capacity in which he seeks to register. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that Kunz, acting on behalf of the firm, conducted a securities business while failing to maintain the required minimum net capital. The findings also stated that the firm and Kunz maintained inaccurate books and records, filed inaccurate FOCUS reports, submitted an incomplete and materially inaccurate notice of a possible net capital deficiency to NASD, and failed to file required information concerning an arbitration award and its subsequent settlement. In addition, the findings stated that Kunz and the firm allowed an unregistered person to function in a capacity that required registration. NASD also found that the firm failed to maintain adequate written supervisory procedures with respect to the reporting of arbitration awards and settlements.

Kunz' suspension began February 16, 2004, and will conclude at the close of business August 16, 2004. (NASD Case #C3A010045)

SunAmerica Securities, Inc. (CRD #20068, Phoenix, Arizona) and Michael Robert Roeser (CRD #1304673, Registered Principal, Libertyville, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$75,000, and ordered to pay a cash settlement in the amount of \$105,769.86 to public customers. The firm was also ordered to establish procedures regarding recommendations of Class B share purchases and to require its representatives and principals to complete an online training module that addresses the economic considerations applicable to the recommendation of Class B shares, the availability of sales charge breakpoints, and the use of Mutual Fund Analyzers/Calculators that compare the expenses of the different fund classes. Roeser was fined \$5,000; ordered to pay \$39,000 to public customers, which represents disgorgement of his additional commissions earned by selling Class B shares; suspended from association with any NASD member in any capacity for 30 days; and ordered to requalify as a investment company and variable contracts representative.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Roeser, recommended and sold approximately \$9.6 million of Class B mutual fund shares to public customers and, because the purchase of Class B shares were recommended, the customers did not obtain the benefit of sales charge breakpoints to which they would have been entitled if the accounts had purchased Class A shares in fewer funds and fund families. The findings also stated that the recommendations to purchase Class B shares were unsuitable because the internal expenses of the Class B shares over the period that the customers expected to hold the shares exceeded the amount of the sales charges that would have been paid on the purchase of Class A shares, thus costing the customers more to purchase and hold Class B shares than Class A shares. In addition, NASD determined that the firm failed to establish, maintain, and enforce adequate written proceedings and a supervisory system reasonably designed to detect and prevent unsuitably large purchases of Class B mutual fund shares.

Roeser's suspension began March 1, 2004, and will conclude at the close of business March 30, 2004. (NASD Case #C3A040005)

Firm and Individual Fined

Hornblower Fischer & Co. (CRD #10885, New York, New York) and Richard Francis Morgan (CRD #340044, Registered Principal, Verona, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$15,000, jointly and severally. Without admitting or denying the allegations, the firm and Morgan consented to the described sanction and to the entry of findings that the firm, acting through Morgan, permitted persons whose registrations were inactive due to their failure to complete the Regulatory Element of NASD's Continuing Education Requirement within the prescribed period to function in capacities requiring registration. The findings also stated that the firm, acting through Morgan, had established written supervisory procedures addressing the Regulatory Element of NASD's Continuing Education Requirement, but these procedures were not reasonably designed to achieve full compliance with the requirements of NASD Membership and Registration Rule 1120. (NASD Case #C3A040003)

Firms Fined

ABN Amro Incorporated (CRD #15776, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through the Automated Confirmation Transaction ServiceSM (ACTSM) last sale reports of transactions in NASDAQ National Market[®] (NNM[®]) securities and failed to designate through ACT such last sale reports as late. The findings also stated that the firm incorrectly designated as ".SLD" through ACT last sale reports of transactions in NNM securities reported to ACT within 90 seconds of execution. (NASD Case #CMS040005)

The Buckingham Research Group Incorporated (CRD #13233, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$29,000, \$10,000 of which was jointly and severally. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted a research analyst to act as a general securities representative of the firm by allowing him to generate research reports that identified him by name while failing to be registered in such capacity. The findings also stated that the firm reported proprietary short sale transactions through ACT without a short sale modifier and one long sale transaction was reported as short. NASD also found that the firm failed to report to ACT the correct symbol indicating that the firm executed transactions in eligible securities in an agency capacity. In addition, NASD found that the firm allowed individuals to act in the capacity of

registered representatives while their registrations were deemed inactive due to their failure to satisfy the Regulatory Element of NASD's Continuing Education Requirement. Moreover, NASD found that the firm failed to preserve e-mail communications sent to institutional investors for three years, the first two years in an easily accessible place. (NASD Case #C05040005)

Cantor Fitzgerald & Co. (CRD #134, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$29,000, and required to revise its written supervisory procedures concerning the requirements of quotation activity in OTC Equity securities. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to contemporaneously or partially execute customer limit orders in NASDAQ securities after it traded each subject security for its own market-making account at a price that would have satisfied each customer's limit order. The findings also stated that the firm executed short sale transactions in NNM securities at or below the current inside bid when the current inside bid was below the preceding inside bid in the security.

NASD found that the firm executed short sale orders in certain securities and failed to make an affirmative determination prior to executing such transactions. In addition, NASD found that the firm failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in an NNM security and eligible securities and failed to designate through ACT such last sale reports as late; failed to report the correct price of transactions in NNM securities in last sale reports of transactions; failed to report through ACT last sale reports of transactions in NNM securities; failed to designate through ACT last sale reports as reflecting a price different from the current market when the execution was based on a prior reference point in time; failed to report to ACT the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt, or cross for transactions in eligible securities; failed to report to ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity; failed to provide written notification disclosing to its customers its correct capacity in transactions; and failed to display immediately customer limit orders in NASDAQ securities in its public quotation when each such order was at a price that would have improved the firm's bid or offer in each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each such security.

In addition, NASD found that the firm failed to show the order entry time, the correct time of execution, correct capacity, correct price of execution, correct date of order receipt,

that an order was long, and quotations from three dealers on the memorandum of brokerage orders. Moreover, NASD found that the firm failed to preserve for a period of not less than three years, the first two in an accessible place, the memorandum of brokerage orders. Furthermore, NASD found that the firm made available a report on the covered orders in national market system securities that it received for execution from any person. This report included incorrect information as to how orders should be categorized. The findings also stated that the firm incorrectly designated as ".SLD" through ACT last sale reports of transactions in eligible securities reported to ACT within 90 seconds of execution. NASD also found that the firm published quotations for an OTC Equity Security in a quotation medium and did not have in its records the documentation required by SEC Rule 15c2-11(a); did not have a reasonable basis under the circumstances for believing that the Paragraph (a) information was accurate in all material respects; or did not have a reasonable basis under the circumstances for believing that the sources of the Paragraph (a) information were reliable. The findings further stated that the quotations did not represent a customer's indication of unsolicited interest, and the firm, for each quotation, failed to file a Form 211 with NASD at least three business days before the firm's quotations were published or displayed in a quotation medium. NASD also determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules regarding quotation activity in OTC Equity securities. (NASD Case #CMS040008)

Greenhill & Co., LLC (CRD #40290, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000, \$5,000 of which was jointly and severally. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted individuals to act in capacities that required registration while their registration status with NASD was inactive due to their failure to complete the Regulatory Element of NASD's Continuing Education Requirement. (NASD Case #C10040001)

Paramount Capital, Inc. (CRD #29795, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000, \$5,000 of which was jointly and severally. Without admitting or denying the allegations, the firm consented to the described allegations and to the entry of findings that, acting under the direction and control of an individual, it was a participating broker in a contingency offering of securities, and investor funds raised in the offering were not transmitted to a separate bank escrow account meeting the requirements of Rule 15c-2-4. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with SEC Rule 15c2-4. (NASD Case #C9B040003)

Synovus Securities, Inc. (CRD #14023, Columbus, Georgia) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to prevent the conversion or misuse of public customer funds. **(NASD Case #C07040013)**

Individuals Barred or Suspended

Ronald David Armitage (CRD #7228, Registered Principal, Staten Island, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Armitage consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to appear for an on-the-record interview. **(NASD Case #CMS040002)**

Michael John Blanchard (CRD #1246309, Registered Principal, Belmont, New Hampshire) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Blanchard consented to the described sanctions and to the entry of findings that he made an unsuitable recommendation to a public customer to invest funds in a variable annuity without reasonable grounds for believing that the variable annuity was suitable for the customer.

Blanchard's suspension began March 15, 2004, and will conclude at the close of business March 26, 2004. **(NASD Case #C11040005)**

Christopher Alan Booze (CRD #3263962, Registered Representative, Lexington, Kentucky) was barred from association with any NASD member in any capacity. The sanction was based on findings that Booze completed a firm instruction form to request that a \$3,200 check, made payable to a third party, be issued from the account of a public customer and given to Booze without the customer's knowledge, authorization, or consent, thereby improperly using customer funds. The findings also stated that Booze created and sent to the customer a fictitious account statement that overstated the value of the customer's holdings in his firm account to conceal his withdrawal from the customer's account. NASD also found that Booze failed to respond to NASD requests for information. **(NASD Case #C05030048)**

Jeffrey Harlan Boss (CRD #2685155, Registered Representative, North Caldwell, New Jersey) was barred from association with any NASD member in any capacity. The

sanction was based on findings that Boss failed to respond to NASD requests for information. The findings also stated that Boss engaged in outside business activity, for compensation, and failed to provide prompt written notice to his member firms. **(NASD Case C9B030042)**

Gerald Page Brockman (CRD #1362573, Registered Representative, Charlotte, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brockman consented to the described sanction and to the entry of findings that he converted the funds of public customers to his own use without authorization. **(NASD Case #C07040002)**

Gregg Thomas Catalano (CRD #2551346, Registered Representative, Syosset, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$22,500, including partial disgorgement of \$15,000, and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Catalano reassociates with any NASD member in any capacity following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Catalano consented to the described sanctions and to the entry of findings that he recommended and sold securities products to public customers while unregistered with NASD.

Catalano's suspension began March 1, 2004, and will conclude at the close of business May 31, 2004. **(NASD Case #C10040004)**

Mario Lucas Chavez (CRD #4082977, Registered Representative, Albuquerque, New Mexico) was barred from association with any NASD member in any capacity. The sanction was based on findings that Chavez received \$22,103.24 from a public customer intended by the customer for investment purposes, and directed the office staff to purchase a fixed annuity for \$11,000 and to remit the balance to his firm's clearing firm. The findings also stated that Chavez took possession of the check payable to the clearing firm and deposited it into a securities account in his name with his member firm, thereby misappropriating customer funds. NASD also found that Chavez prepared an account statement that purported to represent the customer's investment and delivered it to the customer in order to conceal his misappropriation of the customer's funds. Furthermore, the findings stated that Chavez failed to respond to NASD requests for information. **(NASD Case #C3A030025)**

Douglas Conant Day (CRD #1131612, Registered Principal, San Jose, California) was fined \$125,000, barred from association with any NASD member in any capacity, and ordered to pay \$79,500 in restitution, plus interest, to public customers.

The sanctions were based on findings that Day made egregious, unsuitable recommendations to public customers. The findings also stated that Day failed to respond to NASD requests for information. **(NASD Case #C01020024)**

Robert Michael Dooley (CRD #2735594, Registered Representative, Highlands Ranch, Colorado) was fined \$49,400, suspended from association with any NASD member in any capacity for two years, and ordered to pay \$4,258 in restitution to a public customer. The sanctions were based on findings that Dooley made unsuitable recommendations to a public customer to purchase mutual funds without having a reasonable basis for believing that the recommendations made were suitable for the customer, based on the customer's circumstances and needs.

Dooley's suspension began February 17, 2004, and will conclude at the close of business February 16, 2006. **(NASD Case #C3A030036)**

Doyle Scott Elliott (CRD #1727061, Registered Principal, Anna Maria, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Elliott received \$35,000 from a public customer to purchase a low-priced stock in collaboration with Elliott, and was told that the stock would be sold at a profit within 30 days, and that they would split the profit. The findings also stated that Elliott failed to use the customer's funds and sent him fictitious trade confirmations purporting to confirm sell transactions from the customer's account at Elliott's member firm although he did not have an account at the firm and none of the transactions occurred. NASD also found that Elliott failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C07030057)**

Salvatore John Fabrizio (CRD #2505827, Registered Representative, Long Island City, New York) was fined \$25,000, suspended from association with any NASD member in any capacity for two years, and ordered to pay \$4,914.50, plus interest, in restitution to public customers. The sanctions were based on findings that Fabrizio purchased securities for the accounts of public customers without the customers' knowledge, authorization, or consent. The findings also stated that Fabrizio failed to respond timely to NASD requests to provide information and to give testimony.

Fabrizio's suspension began March 1, 2004, and will conclude at the close of business March 1, 2006. **(NASD Case #C10030073)**

David Bosley Fenwick (CRD #1957952, Registered Supervisor, Bowling Green, Kentucky) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid

before Fenwick reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Fenwick consented to the described sanctions and to the entry of findings that he exercised discretion in transactions in the accounts of public customers without prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm. The findings also stated that Fenwick executed an unauthorized equity purchase in the account of public customers without the customers' knowledge or consent.

Fenwick's suspension began March 1, 2004, and will conclude at the close of business March 30, 2004. **(NASD Case #C05040003)**

Maxine Elaine Fowler (CRD #2416814, Registered Representative, Greer, South Carolina) was barred from association with any NASD member in any capacity. The sanction was based on findings that Fowler failed to respond to NASD requests for information. The findings also stated that Fowler made misrepresentations to public customers in the sale of long-term callable certificates of deposit (CDs) by telling the customers that the CDs had significantly shorter maturities than they actually had. **(NASD Case #C05030043)**

David Logan Froede (CRD #2032725, Registered Representative, San Jose, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Froede sent a misleading account statement to a public customer purporting to represent all of the activities in the customer's account but failed to reflect a share redemption and check withdrawals totaling \$250,000 that Froede converted to his own use and benefit. The findings also stated that Froede forged the customer's name to checks without the customer's authorization, knowledge, or consent. NASD also found that Froede failed to respond to NASD requests for information and documentation. **(NASD Case #C8A030075)**

Gary Joseph Giordano (CRD #2722480, Registered Principal, Brooklyn, New York) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Giordano consented to the described sanction and to the entry of findings that he used fraudulent and deceptive misrepresentations and omissions of material fact in making unsuitable recommendations of securities to public customers. The findings also stated that Giordano egregiously failed to supervise the sales activities and conduct of registered representatives and unregistered persons. **(NASD Case #CMS030182)**

Ryan Goolcharan (CRD #2884804, Registered Representative, South Brunswick, New Jersey) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Goolcharan reassociates with any NASD member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Goolcharan consented to the described sanctions and to the entry of findings that he recommended the purchase of a stock to public customers without a reasonable basis for believing the stock was suitable for any investor. The findings also stated that Goolcharan made material misrepresentations and omitted material facts when he recommended the stock to public customers. In addition, NASD found that Goolcharan solicited public customers to buy a stock and failed to submit the required form to his member firm for approval of the solicitations and marked the solicited trades as "unsolicited" in his firm's automated order-entry system. The findings stated that Goolcharan caused his firm's records to be inaccurate and caused the firm to violate Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-3 promulgated thereunder.

Goolcharan's suspension began March 1, 2004, and will conclude at the close of business August 31, 2004. (NASD Case #CAF030064)

Cary Edwin Grant (CRD #1314269, Registered Principal, Chicago, Illinois) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for three months and suspended from association with any NASD member in any principal or supervisory capacity for six months thereafter. In light of the financial status of Grant, no monetary sanction has been imposed. Without admitting or denying the allegations, Grant consented to the described sanctions and to the entry of findings that he performed duties as a general securities principal and was the president of his member firm while his registration status with NASD was inactive due to his failure to timely complete the Regulatory Element of NASD's Continuing Education Rule. The findings also stated that Grant failed to file timely a written application for change in ownership of his member firm in contravention of his member firm's membership agreement with NASD. NASD also found that a member firm, acting through Grant, opened a branch office and failed to properly notify NASD of its intent in contravention of the firm's membership agreement. The findings further stated that Grant failed to establish and maintain a supervisory system over the activities of a branch office of his member firm reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules in that Grant permitted his NASD Electronic Signature and password to be used by an individual at the firm who was not a registered principal and permitted new accounts to be opened and orders

executed without the approval of a firm principal. In addition, NASD found that Grant failed to respond promptly to NASD requests for information and documentation.

Grant's suspension in all capacities began February 19, 2004, and will conclude at the close of business May 18, 2004. Grant's suspension as a general securities principal will begin May 19, 2004, and will conclude at the close of business November 18, 2004. (NASD Case #C8A030013)

Robert Haar Griffin (CRD #2149540, Registered Representative, Montrose, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$33,500, \$8,500 of which represents financial benefits received, and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Griffin reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Griffin consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the account of public customers. NASD also found that Griffin made recommendations to public customers and did not have a reasonable basis for believing that the recommendations made were suitable for the customers.

Griffin's suspension began February 17, 2004, and will conclude at the close of business August 16, 2005. (NASD Case #C3A040002)

Stratos Hatzikontos (CRD #2599724, Registered Representative, Fresh Meadows, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Hatzikontos received \$40,000 from public customers for investment in a fictitious security and misappropriated the funds for his own use. The findings also stated that Hatzikontos prepared false and fictitious account statements that purported to represent the performance of the customers' funds in his fictitious corporation. NASD also found that Hatzikontos failed to respond to NASD requests for information. (NASD Case #C10030065)

Jerry Moore Hill (CRD #3357, Registered Principal, San Antonio, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any principal or supervisory capacity for 10 business days. Without admitting or denying the allegations, Hill consented to the described sanctions and to the entry of findings that she accepted \$45,179 of customer funds into the firm's bank account that triggered a reserve computation requirement. The findings also stated that the member firm then failed to calculate a reserve computation or to make any required deposits to a reserve account to cover customer credits during the time the firm held customer funds.

Hill's suspension will begin March 22, 2004, and will conclude at the close of business April 2, 2004. (NASD Case #C06040002)

Jerri Shavon Hunter (CRD #4405016, Registered Representative, Silver Spring, Maryland) was barred from association with any NASD member in any capacity. The sanction was based on findings that Hunter received \$2,578 from a public customer as an advance to assist the customer in selling a real estate time-share she owned. The findings also stated that Hunter endorsed and negotiated the check but failed to assist the customer in selling her time-share, thereby converting the funds to her own use and benefit. NASD also found that Hunter failed to respond to NASD requests for information. (NASD Case #C07030070)

Barry Duane Jordan (CRD #1074870, Registered Principal, Moreno Valley, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Jordan consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior notice to, and receiving approval from, his member firm.

Jordan's suspension began March 1, 2004, and will conclude at the close of business April 29, 2004. (NASD Case #C02040003)

David Theodore Kaagan (CRD #2727926, Registered Representative, Beverly Hills, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Kaagan failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C02030026)

James Allen Kenas (CRD #2095140, Registered Principal, Coeur d'Alene, Idaho) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for six months. In light of the financial status of Kenas, no monetary sanction has been imposed. Without admitting or denying the allegations, Kenas consented to the described sanction and to the entry of findings that he made recommendations to public customers that they purchase \$80,000 in mutual fund shares using the proceeds from a mortgage on their home. The findings also stated that Kenas' recommendations were made without reasonable grounds for believing that such recommendations were suitable for the customers upon the basis of the facts disclosed by the customers as to their other security holdings, financial situation, and needs.

Kenas' suspension began March 1, 2004, and will conclude at the close of business August 31, 2004. (NASD Case #C3B040001)

William Michael Kenyon (CRD #1937708, Registered Representative, Canandaigua, New York) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kenyon consented to the described sanction and to the entry of findings that, without the knowledge or consent of public customers, he signed the names of the customers on conversion documents converting term life insurance policies to permanent insurance products that did not require additional medical underwriting in order to create a temporary income stream. The findings also stated that Kenyon failed to respond to NASD requests for information. (NASD Case #C8B030030)

Diana Lou Knutson (CRD #1047287, Registered Representative, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Knutson consented to the described sanction and to the entry of findings that she converted \$84,620.55 of a public customer's securities funds to her own personal use and benefit without the customer's authorization, knowledge, or consent. The findings also stated that Knutson failed to respond to NASD requests for information. (NASD Case #C04040001)

Jay Alvin Leishman (CRD #1581645, Registered Representative, San Diego, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Leishman consented to the described sanction and to the entry of findings that he obtained a \$12,647 check from a public customer intended to be invested for the customer's sole and exclusive benefit. The findings also stated that Leishman, without the customer's knowledge or consent, deposited the check into his personal bank account and subsequently used the funds for his own benefit. (NASD Case #C02040007)

Heather Ann Mann (CRD #4617603, Associated Person, Unadilla, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Mann willfully failed to disclose a material fact on her Uniform Application for Securities Industry Registration or Transfer (Form U4). The findings also stated that Mann failed to respond to NASD requests for documents and information. (NASD Case #C9A030033)

David Anthony Mauro (CRD #4649662, Associated Person, Orlando, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Mauro reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Mauro consented to the described sanctions and to the entry of findings that he willfully misrepresented material facts on his Form U4.

Mauro's suspension began February 2, 2004, and will conclude August 1, 2004. **(NASD Case #C07040001)**

Sampson McKie, III (CRD #4209727, Associated Person, Staten Island, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that McKie redirected \$1,072.94, which was to be credited to the account of a public customer, into his personal account at his member firm without the customer's authorization, knowledge, or consent and used the funds for his own personal use. **(NASD Case #C9B030055)**

Jairzinho Merzius (CRD #4020892, Associated Person, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Merzius reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Merzius consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

Merzius' suspension began February 2, 2004, and will conclude at the close of business February 1, 2006. **(NASD Case #C10040003)**

Jordan A. Ness (CRD #2706916, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$22,500 and suspended from association with any NASD member in any capacity for 120 days. The fine must be paid before Ness reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Ness consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firm. The findings also stated that Ness established securities accounts at other member firms, and after he became registered with member firms, he failed to promptly notify his member firm in writing that he had established the accounts, and failed to promptly notify the other firms of his association with his member firm. NASD also found

that Ness, while associated with a member firm, engaged in outside business activities for compensation without providing prompt written notice to his member firm.

Ness' suspension began March 15, 2004, and will conclude at the close of business July 14, 2004. **(NASD Case #C3B040002)**

Luther Ernest Oliver (CRD #737073, Registered Principal, Chesterfield, Missouri) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Oliver consented to the described sanction and to the entry of findings that he was associated with a member firm without the approval of the Securities and Exchange Commission (SEC) and/or NASD while subject to a statutory disqualification. **(NASD Case #C04040005)**

Derek Michael Pagan (CRD #2630393, Registered Representative, Fort Myers, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pagan consented to the described sanction and to the entry of findings that he effected purchases of Class A mutual fund shares in the account of a public customer but failed to apply the reduced sales charges applicable in breakpoint sales and imposed excessive sales charges on the transactions by failing to account for rights of accumulation to which the customer was entitled. The findings also stated that Pagan effected unauthorized purchases of Class B mutual fund shares in the customer's account and failed to disclose to his member firm that the customer had not authorized the transactions or that the customer had passed away before the transactions were effected. NASD also found that Pagan permitted the customer's son to forge the customer's signature on a mutual fund switch letter after the customer's death. **(NASD Case #C07040004)**

Peter Michael Panagiotou (CRD #2233079, Registered Principal, Westborough, Massachusetts) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for two years. In light of the financial status of Panagiotou, no monetary sanction has been imposed. Without admitting or denying the allegations, Panagiotou consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation, without prompt written notice to his member firm. The findings also stated that Panagiotou failed to amend his Form U4 to reflect his outside business activities.

Panagiotou's suspension began March 1, 2004, and will conclude at the close of business February 28, 2006. **(NASD Case #C11030039)**

Michael Jay Plummer (CRD #2813048, Registered Principal, Anderson, Indiana) submitted an Offer of Settlement in which he was fined \$1000 and suspended from association with any NASD member in any capacity for 10 business days. In light of the financial status of Plummer, the fine imposed is \$1,000. Without admitting or denying the allegations, Plummer consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation, and failed and neglected to give prompt written notice of his activities to his member firm.

Plummer's suspension began March 1, 2004, and concluded at the close of business March 12, 2004. **(NASD Case #C8A030067)**

Leaudria Maria Polk (CRD #2136432, Registered Representative, New Orleans, Louisiana) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$15,000, including disgorgement of \$2,798.92 in financial benefits received, and suspended from association with any NASD member in any capacity for four months. Without admitting or denying the allegations, Polk consented to the described sanctions and to the entry of findings that she recommended and effected a series of transactions for public customers without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customer on the basis of the customers' financial situations and needs. The findings also stated that Polk sent communications to public customers in connection with the sale of equities and mutual funds that failed to present the risks of the security in a balanced manner, contained unwarranted and misleading statements, omitted material facts, and included exaggerated statements and claims. In addition, NASD found that the communications contained annual rates of return and projections of returns that appeared to predict investment results.

Polk's suspension will begin April 1, 2004, and will conclude July 31, 2004. **(NASD Case #C05040006)**

Ronald J. Ponella (CRD #2616823, Registered Representative, Port Jefferson Station, New York) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ponella consented to the described sanction and to the entry of findings that he converted \$2,000 of a public customer's funds for his own use and benefit. The findings also stated that Ponella failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #CLI030030)**

Charles Alfred Pulcano (CRD #2139987, Registered Representative, Manorville, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD

member in any capacity for six months. Without admitting or denying the allegations, Pulcano consented to the described sanctions and to the entry of findings that he abetted violations of Title 18, Section 1954, of the U.S. Code in connection with another registered representative's involvement in the unlawful and knowing, direct and indirect, giving and offering and/or promise to give and offer fees, kickbacks, commissions, gifts, money, and/or things of value in violation of said statute arising from dealings with a member of the board of trustees of the pension funds of two labor unions.

Pulcano's suspension began February 17, 2004, and will conclude at the close of business August 16, 2004. **(NASD Case #C10040002)**

George Cawood Quinn (CRD #1000586, Registered Principal, Conway, South Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Quinn reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Quinn consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing notice to, and receiving approval from, his member firm.

Quinn's suspension began February 17, 2004, and will conclude at the close of business March 16, 2004. **(NASD Case #C9B040002)**

Mark Anthony Rizzi (CRD #4216139, Associated Person, Lorain, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rizzi consented to the described sanction and to the entry of findings that he withdrew \$25,662 from the money market account of an association claiming that the money would be invested in bond funds, but, in actuality, he converted the money for his personal use or for some other purpose other than the benefit of the association without the permission or authority of the association. The findings also stated that Rizzi created falsified financial statements and records to deceive the association into believing the money had been invested in the bond market. NASD also found that Rizzi failed to respond to NASD requests for information. **(NASD Case #C8B040003)**

Adam R. Rodriguez (CRD #4299928, Registered Representative, San Antonio, Texas) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rodriguez consented to the described sanction and to the entry of findings that he misused public customer funds without the authorization, knowledge, or consent of the customer. NASD also found that Rodriguez was instructed by a

public customer to invest \$85,000 in a fixed annuity; he invested \$75,000 and used the remaining \$10,000 to purchase a check made payable to an account he controlled without the customer's authorization, knowledge, or consent. The findings also stated that Rodriguez was instructed to withdraw \$190,796 from a public customer's account to invest in a fixed annuity but withdrew an additional \$5,000 to purchase a check made payable to an account he controlled without the customer's authorization, knowledge, or consent. In addition, NASD found that Rodriguez forged the customer's signature on an annuity service request form, without the authorization, knowledge, or consent of the customer. (NASD Case #C06030037)

Nathan Richard Root (CRD #4407342, Registered Representative, Cincinnati, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Root reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Root consented to the described sanctions and to the entry of findings that he sold \$13,022.34 worth of shares in a retirement money fund from the brokerage accounts of public customers and purchased \$13,292.34 worth of shares in mutual funds for the customers without the knowledge or consent of the customers and in the absence of written or oral authorization to exercise discretion in the accounts.

Root's suspension will begin March 15, 2004, and will conclude at the close of business March 14, 2006. (NASD Case #C8B040004)

Brett James Sandman (CRD #4018124, Registered Representative, Boca Raton, Florida) was barred from association with any NASD member in any capacity and ordered to pay \$9,008, plus interest, in restitution. The sanctions were based on findings that Sandman failed to respond to NASD requests to appear for an on-the-record interview. The findings also stated that Sandman made misrepresentations and omissions of material fact in connection with the sale of securities to public customers. (NASD Case #CAF030044)

Michael Francis Sefchek (CRD #3200085, Registered Representative, Kingston, Rhode Island) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 20 business days. The fine must be paid before Sefchek reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sefchek consented to the described sanctions and to the entry of findings that he executed transactions in the account of a public customer without the customer's knowledge, authorization, or consent.

Sefchek's suspension began February 17, 2004, and will conclude at the close of business March 15, 2004. (NASD Case #C9B040001)

Timothy Patrick Shively (CRD #1664561, Registered Representative, San Antonio, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$200,000, including disgorgement of \$147,193.26 in commissions, and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Shively consented to the described sanctions and to the entry of findings that he recommended that public customers purchase and accumulate large positions in mutual fund Class B shares without a reasonable basis to believe that the recommendations were suitable because the customers could have purchased Class A shares with a reduced sales charge by applying breakpoints, using letters of intent, and/or using rights of accumulation. The findings also stated that Shively recommended that public customers purchase mutual fund Class B shares without a reasonable basis to believe that the recommendations were suitable because the customers who were liquidating other mutual funds and incurring liquidation charges could have purchased Class A shares at net asset value, would have incurred lower annual costs, and would not have been subject to contingent deferred sales charges (CDSCs). NASD also found that Shively recommended that public customers purchase mutual fund Class B shares without a reasonable basis to believe the recommendations were suitable because the customers could have purchased other share classes with lower charges and/or fees, and, by utilizing the breakpoints available through the other share classes, the customers could have reduced or eliminated CDSCs.

Shively's suspension will begin April 16, 2004, and will conclude at the close of business July 15, 2004. (NASD Case #C04040002)

Timothy Daniel Skelly (CRD #2012322, Registered Principal, Wareham, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Skelly consented to the described sanctions and to the entry of findings that he purchased various municipal bonds for public customers and prepared "fact sheets" that provided specific details about the bonds being purchased, including their creditworthiness, as requested by the customers. The findings also stated that, in connection with the various "fact sheets" prepared by Skelly, certain municipal bonds purchased by the customers were inaccurately represented as "county guaranteed" or "moral obligation bonds" when in fact the bonds contained neither guarantees nor pledges.

Skelly's suspension will begin March 15, 2004, and will conclude at the close of business March 26, 2004. (NASD Case #C11040004)

Dave Randall Smith (CRD #4151393, Registered Representative, Merritt Island, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Smith consented to the described sanction and to the entry of findings that he made improper use of public customers' funds given to him for investment purposes. (NASD Case #C07040010)

Steven Floyd Smithson (CRD #1960852, Registered Principal, Toledo, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Smithson reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Smithson consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information in a timely manner.

Smithson's suspension begins March 15, 2004, and will conclude at the close of business April 13, 2004. (NASD Case #C8A040003)

James Robert Snyder (CRD #1266667, Registered Representative, Canal Fulton, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Snyder consented to the described sanction and to the entry of findings that he settled a customer complaint that had been filed against him and entered into written agreements with the plaintiffs that included improper confidentiality provisions in each settlement agreement that effectively prohibited the customers from disclosing the underlying facts of their complaints and the settlement terms to anyone, including NASD. NASD also found that Snyder failed to respond to NASD requests for information. (NASD Case #C8B040002)

Gerald Francis Stonehouse (CRD #437455, Registered Representative, Hingham, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Stonehouse consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm.

Stonehouse's suspension began February 2, 2004, and will conclude at the close of business August 2, 2004. (NASD Case #C11040003)

Jason M. Sudweeks (CRD #4527175, Registered Representative, Peoria, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sudweeks consented to the described sanction and to the entry of findings that he pasted the signatures of public customers to documents pertaining to their securities accounts using copies of signatures from other firm documents that the customers had signed and submitted the documents to his member firm. (NASD Case #C3A040004)

Jeffrey Dwight Summerford (CRD #2291904, Registered Supervisor, Decatur, Alabama) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$14,951.25, including disgorgement of \$4,951.25 in financial benefits received, and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Summerford reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Summerford consented to the described sanctions and to the entry of findings that he exercised discretionary transactions in the account of a public customer without prior written acceptance of the account as discretionary by his member firm.

Summerford's suspension began March 1, 2004, and will conclude at the close of business August 31, 2004. (NASD Case #C05040004)

Edward Hartman Tarbell (CRD #816644, Registered Representative, Las Vegas, Nevada) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Tarbell reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Tarbell consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, transactions in the account of a public customer on a discretionary basis without obtaining prior written authorization from the customer and acceptance in writing by his member firm of the account as discretionary.

Tarbell's suspension begins March 15, 2004, and will conclude at the close of business March 14, 2006. (NASD Case C3B040003)

David Brian Thomas, Sr. (CRD #1418983, Registered Representative, Houston, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six weeks. The fine must be paid before Thomas reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Thomas consented to the described sanctions and to the entry of findings that he participated in a private securities transaction without notice to, or approval from, his member firm.

Thomas' suspension began February 17, 2004, and will conclude at the close of business March 29, 2004. **(NASD Case #C05040002)**

Robert Charles Tollefson (CRD #447751, Registered Principal, Rolling Meadows, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Tollefson reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Tollefson consented to the described sanctions and to the entry of findings that he allowed, aided, and assisted individuals to assume the duties and perform the functions of a registered representative although the individuals were not properly registered.

Tollefson's suspension began March 1, 2004, and will conclude at the close of business February 28, 2005. **(NASD Case #C8A040002)**

Darrel Thomas Uselton (CRD #2051430, Registered Principal, Edmond, Oklahoma) and **Mark Alan Uselton (CRD #2229571, Registered Principal, Edmond, Oklahoma)** submitted a Letter of Acceptance, Waiver, and Consent in which Darrel Uselton was fined \$15,000, suspended from association with any NASD member in any general securities principal capacity for one year, and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Uselton reassociates with any NASD member following the suspensions or before requesting relief from any statutory disqualification. Mark Uselton was fined \$5,000 and suspended from association with any NASD member in a financial and operations principal capacity for six months. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they caused a member firm to engage in a securities business when the firm's net capital was below the required minimum and caused the firm to fail to provide timely notification required by SEC Rule 17a-11 that the firm's net capital was below the required minimum. The findings also stated that Darrel and Mark Uselton caused a member firm to

file inaccurate FOCUS Part IIA reports. NASD also found that Darrel and Mark Uselton failed and neglected to ensure the preparation and maintenance of accurate books and records for their member firm, resulting in their inability to provide NASD with information regarding the financial condition of the firm. In addition, NASD found that Darrel Uselton acted in the capacity of a general securities principal while not being registered in such capacity.

Darrel Uselton's suspensions begin March 15, 2004; the suspension in a general securities principal capacity will conclude at the close of business March 14, 2005. The suspension in all capacities will conclude at the close of business September 14, 2004. Mark Uselton's suspension will begin March 15, 2004, and will conclude at the close of business September 14, 2004. **(NASD Case #C05040009)**

Duane Scott Vallie (CRD #3035902, Registered Representative, Cape Coral, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$50,000, including disgorgement of \$45,291 in commissions received, and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Vallie reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Vallie consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and outside business activities, for compensation, without prior written notice to, or written approval from, his member firms.

Vallie's suspension began March 1, 2004, and will conclude at the close of business August 31, 2005. **(NASD Case #C07040005)**

Reynolds Michael Verdiner (CRD #2858516, Registered Principal, Brooklyn, New York) was fined \$20,000 and suspended from association with any NASD member in any capacity for four months. The NAC imposed the sanctions following appeal of an OHO decision. The sanctions were based on findings that Verdiner opened accounts for public customers without authorization and effected unauthorized transactions in the accounts.

Verdiner's suspension began February 2, 2004, and will conclude at the close of business June 2, 2004. **(NASD Case #CAF020004)**

John Philip Warner (CRD #2094770, Registered Representative, Covington, Louisiana) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 90 days. The fine must be paid before Warner reassociates with any NASD member following the suspension or before requesting relief from any statutory

disqualification. Without admitting or denying the allegations, Warner consented to the described sanctions and to the entry of findings that he borrowed \$31,219.17 from a public customer and recommended and executed the liquidation of mutual funds in the account of the customer for the purpose of funding the loan to himself. The findings also stated that Warner persuaded the customer to loan him the funds by offering a nine percent return, thereby replacing the customer's original investment with an unsecured loan without reasonable grounds for believing that the recommendation and resultant transactions were suitable for the customer on the basis of the customer's financial situation, investment objectives, or needs.

Warner's suspension began February 2, 2004, and will conclude May 1, 2004. (NASD Case #C05040001)

Scott Alan Webster (CRD #2250242, Registered Principal, Riverview, Florida) was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Webster opened securities accounts at other member firms while he was associated with a member firm, failed to provide written notice to his member firm, and failed to advise the other member firms that he was a representative prior to opening the accounts or placing initial orders in the accounts.

Webster's suspension began February 2, 2004, and concluded at the close of business February 13, 2004. (NASD Case #C07030050)

Michael Fred Zanders (CRD #475794, Registered Principal, Leawood, Kansas) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any principal or supervisory capacity for 30 days. Without admitting or denying the allegations, Zanders consented to the described sanctions and to the entry of findings that he failed to adequately and properly supervise a registered representative in that he failed to detect and take adequate steps to prevent unsuitable recommendations to public customers.

Zanders' suspension began March 1, 2004, and will conclude at the close of business March 30, 2004. (NASD Case #C04040003)

Decisions Issued

The following decisions have been issued by the District Business Conduct Committee (DBCC) or the OHO and have been appealed to or called for review by the NAC as of February 6, 2004. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

D.L. Cromwell Investments, Inc. (CRD #37730, Boca Raton, Florida), David Stewart Davidson (CRD #1212799, Registered Principal, Boca Raton, Florida), Lloyd Sylvester Martin Beirne (CRD #1982417, Registered Principal, Boca Raton, Florida), and Eric Scott Thomes (CRD #2233456, Registered Principal, Boca Raton, Florida). The firm was expelled from NASD membership and Davidson and Beirne were barred from association with any NASD member in any capacity. The firm, Davidson, and Beirne were fined \$3.8 million, jointly and severally. Thomes was fined \$10,000, suspended from association with any NASD member in any capacity for one year, and ordered to requalify by examination before again becoming associated with any NASD member in any capacity requiring registration.

The sanctions were based on findings that the firm engaged in manipulative practices when it managed a private placement of securities by placing a substantial portion of the offering with customer accounts that the firm, Davidson, or Beirne effectively controlled—rather than with the investing public—and the firm later retrieved the securities, building a very substantial long position in the stock that it falsely described as unsolicited arms-length purchases from unaffiliated customers. The findings stated that the firm sold the stock, and stock that it did not yet own, to retail customers at prices substantially higher than the distribution price had been and filled its short positions by retrieving units from another controlled account in transactions falsely reported as bona fide arms-length transactions, thereby obtaining large profits. NASD also found that Thomes, as the firm's head trader, effected most, if not all, of the manipulative transactions by entering quotations and executing orders through which the manipulation was accomplished. In addition, NASD found that the respondents violated SEC Regulation M by bidding for and purchasing securities in the secondary market while distributions of those securities were still in progress. Moreover, the findings stated that Davidson and Beirne failed to respond to NASD requests for documents and to appear and give testimony. Furthermore, NASD found that the firm failed to establish and maintain adequate written supervisory procedures and systems reasonably designed to achieve compliance with Regulation M or SEC Rule 10b-5.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #CAF020007)

Fox & Company Investment, Inc. (CRD #18517, Phoenix, Arizona) and James Wilfred Moldermaker (CRD #858894, Registered Principal, Scottsdale, Arizona) were fined \$35,000, jointly and severally. Moldermaker was barred from association with any NASD member as a financial and operations principal and suspended from association with any NASD member in any supervisory and principal capacity for 10 business days. The sanctions were based on findings that the firm, acting

through Modernmaker, conducted a securities business while failing to satisfy the firm's net capital requirements. The findings also stated that the firm, acting through Modernmaker, maintained material inaccuracies in the firm's books and records, submitted materially inaccurate FOCUS reports, failed to file an amended Form U5 when a terminated individual was named in a consumer-initiated arbitration matter, and failed to report an arbitration award to NASD in violation of NASD Rule 3070.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C3A030017)

Mark Francis Mizenko (CRD #1812411, Registered Principal, Rootstown, Ohio) was fined \$5,000, suspended from association with any NASD member in any capacity for 18 months, and ordered to requalify in all capacities. The sanctions were based on findings that Mizenko, in an attempt to attract new customers, affixed the signature of his member firm's executive vice president, without the officer's knowledge or consent, on a corporate resolution that purported to guarantee to prospective customers automobile purchases and leases from an automobile dealership.

The decision was called for review by the NAC, and the sanctions are not in effect pending consideration of the review. (NASD Case #C8B030012)

PAZ Securities, Inc. (CRD #17554, Boca Raton, Florida) and Joseph Mizrachi (CRD #337288, Registered Principal, Boca Raton, Florida). The firm was expelled from NASD membership and Mizrachi was barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm and Mizrachi failed to respond to NASD requests for information.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C07030055)

Complaints Filed

NASD issued the following complaints. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Donald Joseph Boyles (CRD #3040178, Registered Representative, Austin, Texas) was named as a respondent in an NASD complaint alleging that he signed the name of a public

customer on a insurance application and submitted it to his member firm for processing without the customer's authorization, knowledge, or consent, causing funds to be removed from the customer's escrow account maintained at a mortgage company to pay for the insurance, without the customer's authorization, knowledge, or consent. The complaint also alleges that Boyles failed to respond to an NASD request to appear for on-the-record testimony. (NASD Case #C06040001)

Charles Albert DaCruz (CRD #2444684, Registered Representative, Williston Park, New York) was named as a respondent in an NASD complaint alleging that, while using the means and instrumentalities of interstate commerce to offer securities for sale, DaCruz omitted to state material facts necessary in order to make the statements made in connection with such offers, in light of the circumstances in which they were made, not misleading. The complaint also alleges that, while using the means and instrumentalities of interstate commerce to offer securities for sale, DaCruz made material misrepresentations in the form of price predictions to induce transactions, and transactions did occur. (NASD Case #C3A040001)

Jamie Arnold Engelking (CRD #3120784, Registered Representative, Arvada, Colorado) was named as a respondent in an NASD complaint alleging that he made unsuitable recommendations to public customers in that he had no grounds for believing that public customers had the financial ability to purchase a recommended variable annuity without mortgaging their home to do so. The complaint also alleges that Engelking had no reasonable grounds for believing that the public customers would be able to meet their mortgage commitment should the variable annuity not perform at the very optimistic levels needed to avoid depletion of principal. (NASD Case #C3A040006)

Kojo Nantambu Kandi (CRD #3055831, Registered Representative, Columbus, Ohio) was named as a respondent in an NASD complaint alleging that he recommended and effected securities transactions for the individual retirement account of a public customer that constituted excessive trading activity. The complaint also alleges that Kandi's recommendations and transactions were made without having a reasonable basis for believing that they were suitable for the customer based upon the customer's age, net worth, financial situation, and investment objectives. (NASD Case #C8B040001)

Kenneth David Krassinger, Jr. (CRD #1982792, Registered Representative, Byrnes Mill, Missouri) was named as a respondent in an NASD complaint alleging that he misused a public customer's funds totaling \$50,000, intended for investment purposes, without the knowledge or consent of the customer. (NASD Case #C04040004)

Robert Waldo Leavenworth (CRD #2766524, Registered Representative, Atlanta, Georgia) was named as a respondent in an NASD complaint alleging that he opened accounts for public customers at his member firm and recommended and purchased securities for the accounts that were unsuitable for the customers based on their age, employment status, income needs, net worth, and investment experience. **(NASD Case #C07040012)**

Christopher Scott Maury (CRD #2778197, Registered Representative, Manalapan, Florida) was named as a respondent in an NASD complaint alleging that he received \$13,500 from a public customer for investment purposes and converted the funds to his own use without authorization from the customer. The complaint also alleges that Maury failed to respond to NASD requests for information and documents. **(NASD Case #C07040011)**

Jeffrey Patrick Murphy (CRD #2316701, Registered Representative, Oregon, Wisconsin) was named as respondent in an NASD complaint alleging that he completed a life insurance company's withdrawal/surrender forms with a public customer's personal information that requested withdrawal of \$350,000 from the customer's annuity account without the knowledge or consent of the customer and deposited the funds into his personal bank account, thereby using the proceeds for his own benefit or for some purpose other than the benefit of the customer. The complaint further alleges that Murphy failed to respond to NASD requests for documents and information. **(NASD Case #C8A040001)**

Christopher Michael Reno (CRD #2128187, Registered Principal, Staten Island, New York) was named as a respondent in an NASD complaint alleging that he effected transactions in the accounts of public customers without their prior authorization or consent. The complaint also alleges that Reno failed to respond to NASD requests for information. **(NASD Case #C9B040004)**

Roger Paul Stewart (CRD #1190849, Registered Representative, Morgantown, West Virginia) was named as a respondent in an NASD complaint alleging that he received \$400 from a customer to pay for premiums on her automobile insurance policy and failed to remit the funds to an insurance company, thereby converting the funds for his own personal use. The complaint also alleges that Stewart failed to respond to NASD requests for information. **(NASD Case #C9A040002)**

Suspension Lifted

NASD has lifted the suspension from membership on the date shown for the following firm because it has complied with formal written requests to submit financial information.

Blue Marble Financial, LLC
Irving, Texas
(January 13, 2004)

Individuals Barred Pursuant to NASD Rule 9544 for Failure to Provide Information Requested Under NASD Rule 8210

(The date the bar became effective is listed after the entry.)

Brisbin, May Yan
Denton, Texas
(January 22, 2004)

Cobb, Edward Peter
Glen Rock, New Jersey
(January 21, 2004)

Cohen, Alan Marc
Irvine, California
(January 23, 2004)

Eltzroth, Geoffrey
Marion, Indiana
(January 26, 2004)

Emslie, Patrick
Tucson, Arizona
(January 5, 2004)

Fischer, Francois
Valley Stream, New York
(January 5, 2004)

Gura, Lee
Vista, California
(January 22, 2004)

Gura has appealed this decision to the SEC. (NASD Case # 8210-02030008)

Jin, Yanshi Rock
Vienna, Virginia
(January 20, 2004)

Nelson, Thomas E.
Scottsdale, Arizona
(January 21, 2004)

Plata, Edwin
Lodi, New Jersey
(January 27, 2004)

Smith, Jr., James L.
Jackson, Tennessee
(January 5, 2004)

Tran, Jack H.
Boca Raton, Florida
(January 26, 2004)

Young, Christopher K.
Shreveport, Louisiana
(January 20, 2004)

Individuals Suspended Pursuant to NASD Rule 9541(b) for Failure to Provide Information Requested Under NASD Rule 8210

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Foreman, James A.
Lafayette, Louisiana
(January 8, 2004)

Yeninas, Michael S.
Brooklyn, New York
(January 5, 2004)

Gilbert, Martin
Jersey City, New Jersey
(January 15, 2004)

Zander, Melissa J.
Sterling Heights, Michigan
(January 14, 2004)

Individuals Suspended Pursuant to NASD Rule Series 9510 for Failure to Comply with an Arbitration Award or a Settlement Agreement

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Ford, George P.
Rye, New York
(February 2, 2004 –
February 19, 2004)

Hart, Marlene
Sanford, Florida
(February 3, 2004)

NASD Fines State Street Research Investment Services \$1 Million for Market Timing Supervision Violations; Firm Ordered to Pay More than \$500,000 in Restitution

NASD fined State Street Research Investment Services, Inc. (SSR) \$1 million for failing to prevent market timing of State Street Research mutual funds due to its inadequate supervisory systems. SSR also agreed to pay more than \$500,000 in restitution to the individual State Street Research mutual funds to compensate the for losses attributed to the market-timing activity. SSR, located in Boston, MA, distributes State Street Research mutual funds to NASD-regulated broker-dealers for sale to their customers.

NASD found that, from 2001 through August 2003, SSR's inadequate supervisory system improperly permitted the customers of at least one other securities firm, Prudential Equity Group, Inc., formerly known as Prudential Securities, Inc., to exchange (alternatively buy and sell) shares of State Street Research funds beyond the annual limits set forth in the prospectuses. The annual limits, typically six exchanges per year, were designed to limit market timing in the funds. Market timing is the frequent trading of mutual fund shares in order to take advantage of pricing inefficiencies or market movements.

"Market timing, in violation of prospectus limits, can dilute the value of fund shares, raise transaction costs, and thus harm other fund shareholders," said Mary L. Schapiro, Vice Chairman of NASD. "When a firm is on notice, as SSR was, that its funds are being timed, the firm must respond quickly and effectively."

In its investigation, NASD found that, by November 2001, SSR's operations personnel had reason to believe that the Boston office of Prudential Securities was engaged in market-timing activities on behalf of its clients and that, among others, certain Prudential Securities customers had been able to exchange shares of State Street Research funds beyond the annual limits described in the applicable prospectus.

SSR was aware that a number of Prudential Securities' registered representatives engaged in deceptive conduct so that their customers could exchange funds in excess of prospectus limits. For example, if SSR sent "block letters" prohibiting customers from making future fund exchanges in an account because the customer had exceeded a fund's annual exchange limit, Prudential Securities' registered representatives would use a different account number for that customer in order to evade the block. This ensured the "blocked" customer would be able to continue to buy and sell shares of that fund.

NASD found that SSR's supervisory procedures and systems were not adequate to prevent and detect customers circumventing the block restrictions. The firm's written supervisory procedures and systems failed to provide for adequate follow-up to the "block letters" it sent to brokerage firms. Some customers of these firms were able, through the establishment of new customer accounts, to continue trading in SSR funds even after one of their accounts had been blocked. Moreover, SSR's systems and procedures were not able to ensure that accounts were blocked in a timely manner. In several instances, SSR sent "block letters" after the customer had already exceeded the fund exchange limits. The firm did not have an effective system for tracking and enforcing compliance with the "block letters."

In addition to fining the firm, NASD also required SSR to certify that it has disclosed all instances of fund trading that were inconsistent with the prospectus exchange limits and that it has implemented appropriate systems and controls with respect to market timing.

During its investigation, NASD also found that SSR failed to preserve and maintain internal e-mail communications relating to the firm's business as required by the federal securities laws and NASD rules. For example, the firm failed to retain all e-mails that were sent but later deleted by its employees.

In addition to paying a \$1 million fine, SSR was ordered to pay more than \$500,000 to the State Street Research funds to compensate them for losses resulting from the prohibited market timing during the three-year period ending December 31, 2003.

The restitution payment will be apportioned among the affected State Street Research Funds.

In settling this matter, SSR neither admitted nor denied the charges.

Fifteen Firms to Pay Over \$21.5 Million in Penalties to Settle SEC and NASD Breakpoints Charges; Affected Mutual Fund Customers to Receive Refunds

The Securities and Exchange Commission (SEC) and NASD announced enforcement and disciplinary actions against a total of 15 firms for failure to deliver mutual fund breakpoint discounts during 2001 and 2002. Breakpoint discounts are volume discounts applicable to front-end sales charges on Class A mutual fund shares (front-end loads). SEC and NASD each brought cases against a group of seven firms, and NASD separately brought actions against the other eight firms. The 15 firms have agreed to compensate customers for the overcharges, pay fines in an amount equal to their projected overcharges that total over \$21.5 million, and undertake other corrective measures.

The SEC and NASD had previously determined that many investors were not receiving correct breakpoint discounts on their mutual fund purchases. (See Joint SEC/NASD/NYSE Report of Examinations of Broker-Dealers Regarding Discounts on Front-End Sales Charges on Mutual Funds ([link below](#))). NASD directed securities firms to conduct an assessment of their mutual fund transactions, using a statistically significant sample of the 2001 and 2002 transactions. The assessments showed that most firms did not uniformly deliver appropriate breakpoint discounts to customers. Overall, discounts were not delivered in about one of five eligible transactions (eligible transactions were certain automated purchases of Class A Shares). The average amount of overcharge per transaction was \$243, ranging up to \$10,000. Based on the self-assessment, NASD estimated that at least \$86 million was owed to investors for 2001 and 2002 alone. NASD directed all firms to provide refunds to customers who were overcharged, directed 446 firms to notify customers that they may be due refunds, and directed 174 firms to conduct a complete review of individual transactions for possible missed opportunities. The firms named in today's enforcement actions fell into two categories: those with higher-than-average failure rates and high dollar amounts of total overcharges; and those whose failure rates were significantly higher than average.

To resolve these actions, each of the 15 firms agreed to review all front-end load mutual fund trades in excess of \$2,500 conducted between January 1, 2001, and November 3, 2003; to provide written notification of the firm's problem delivering breakpoint discounts to each customer who purchased front-end load mutual funds from January 1, 1999, through November 3, 2003, and advise these customers that they may be entitled to a refund; to provide refunds where appropriate; and to pay a fine equal to the amount of the firm's projected overcharges.

The names of the firms charged, fines to be paid (equal to projected overcharges to customers), and projected rates of missed breakpoints, are as follows:

Firms settling with the SEC and NASD in separate actions:

Wachovia Securities, LLC	\$ 4,844,465	28.77%
UBS Financial Services Inc.	\$ 4,621,768	30.03%
American Express Financial Advisors Inc.	\$ 3,706,693	29.70%
Raymond James Financial Services, Inc.	\$ 2,595,129	31.78%
Legg Mason Wood Walker, Inc.	\$ 2,315,467	34.61%
Linsco/Private Ledger Corp.	\$ 2,232,805	35.64%
H.D. Vest Investment Securities, Inc.	\$ 725,216	33.39%

Firms settling with NASD only:

Bear, Stearns & Co. Inc.	\$ 280,469	52.00%
Lehman Brothers Inc.	\$ 123,882	59.96%
Cresap, Inc.	\$ 99,458	88.48%
SWS Financial Services	\$ 66,468	89.69%
Kirkpatrick, Pettis, Smith, Polian Inc.	\$ 39,935	53.56%
Southwest Securities, Inc.	\$ 36,971	89.02%
David Lerner Associates, Inc.	\$ 32,711	64.88%
Breck & Young Advisors, Inc.	\$ 31,224	53.74%

The SEC orders find that the firms, by failing to disclose to certain customers that they were not receiving the benefit of applicable breakpoint discounts, violated Section 17(a)(2) of the Securities Act of 1933. NASD made findings that the firms violated NASD's just and equitable principles of trade rule by failing to give customers the benefit of applicable breakpoint discounts and by failing to disclose to those customers that they were not receiving the benefit of applicable discounts. In addition, the Commission charged six of the seven firms (all but Raymond James Financial Services) with failing to disclose on customer confirmations the remuneration the firms received in connection with the front-end loads, in violation of Rule 10b-10 under the Securities Exchange Act of 1934. H.D. Vest also resolved charges by the Commission related to unsuitable sales of Class B mutual fund shares, as described in more detail below. The fine imposed on Cresap, Inc., was reduced to \$50,000 based on the firm's demonstrated financial condition.

Stephen M. Cutler, Director of the SEC's Division of Enforcement, remarked: "These Commission actions target seven firms whose breakpoint overcharges totaled \$21 million over a two-year period. But our actions and the NASD's are a message to every broker-dealer: you must exercise due care to provide appropriate breakpoint discounts to mutual fund investors, or enforcement action will be taken against you, and substantial penalties will be imposed."

"Securities firms must deliver on promises made to customers; breakpoints are no exception. We estimate that for 2001 and 2002 alone, \$86 million is owed to investors from the failure to award breakpoint discounts, demonstrating just how critical it is that firms identify, remediate and take steps to prevent problems in this critical segment of the markets," said Mary Schapiro, NASD Vice Chairman and President of Regulatory Policy and Oversight. "The fines and other remedial measures make clear that these types of failures, whatever the cause, will not be tolerated, and that the interests of customers are paramount."

As described in the NASD and SEC settlements, when an investor buys mutual fund shares with a front-end load, the sales charge, or load, portion of the offering price is not invested in the fund, but instead is paid to the fund's principal underwriter or distributor. When the purchase is made through a broker-dealer, the fund's principal underwriter or distributor pays a part of the front-end load amount to the broker-dealer that sold the fund shares to the investor. Mutual funds that sell shares charging front-end loads usually offer discounts at certain pre-determined levels of investment, which are called breakpoints. Front-end loads and breakpoints can vary among funds within a fund complex or across fund complexes. For example, a mutual

fund might charge an investor 5.75 percent of the sales price for purchases of less than \$50,000, but reduce the sales charge to 4.75 percent for investments between \$50,000 and \$99,999. An investor can usually procure discounts on sales charges at investment levels of \$50,000, \$100,000, \$250,000, and \$500,000. At the \$1 million investment level, generally there is no sales charge. Investors may aggregate purchases in one or more accounts to reach a breakpoint threshold.

The NASD and SEC orders further state that broker-dealers that sell mutual fund shares to retail customers must disclose applicable breakpoint discount information to their customers and must have procedures reasonably designed to ascertain information necessary to determine the availability and appropriate level of breakpoints. A failure to do so can result not only in the customer being deprived of a benefit to which he or she is entitled, but also in the broker-dealer and registered representative receiving increased commissions at the customer's expense.

In addition to finding breakpoint violations, the SEC's settled order against H.D. Vest Investment Securities, Inc., finds that the firm, in recommending that certain customers purchase large amounts (\$100,000 or greater) of Class B mutual fund shares, failed to adequately disclose that an equivalent investment in Class A shares could yield a higher return as a result of applicable breakpoint discounts and reduced ongoing expenses. Among other things, the order directs Vest to pay a \$691,812 fine based on its excess Class B share commissions, and to offer the affected customers the opportunity to convert their Class B shares to A shares. Further, Vest agreed to retain an independent consultant to conduct a review of, and make recommendations regarding, the firm's Class B share policies and procedures.

The original examination findings underlying these breakpoints actions were outlined in the Joint SEC/NASD/NYSE Report of Examinations of Broker-Dealers Regarding Discounts on Front-End Sales Charges on Mutual Funds (available at: www.nasdr.com/pdf-text/bp_joint_exam.pdf and www.sec.gov/news/studies/breakpointrep.htm). Earlier this year, NASD led an industry task force that explored and recommended ways that the mutual fund and broker-dealer industries could prevent breakpoint problems and errors in sales load calculations in the future. The Task Force issued a report that recommends a number of operational enhancements, disclosure requirements, and regulatory changes, which is available at: www.nasdr.com/breakpoints_report.asp. Industry working groups are in the process of implementing the Task Force's recommendations.

NASD Fines Prudential \$2 Million; Orders \$9.5 Million to Customers for Annuity Sales in Violation of NY Insurance Regs

NASD has fined Prudential Equity Group, Inc., (formerly known as Prudential Securities, Inc.) and Prudential Investment Management Services LLC, \$2 million and ordered the firms to pay customers \$9.5 million for sales of annuities, including variable annuities, that violated a New York State Insurance Department regulation and NASD rules.

From November 1998 through mid-2002, certain Prudential employees repeatedly circumvented Regulation No. 60 of the New York State Insurance Department, which governs replacement sales of annuity contracts. The regulation requires documentation of two separate interactions with a customer, documentation of specific information about the old annuity contract, and disclosure of comparison information before a replacement sale can be completed. The regulation is intended to protect investors by requiring disclosure of information in order to reduce opportunities for misrepresentation and to allow investors to make comparisons between their current annuity and the proposed replacement annuity.

In an organized effort to circumvent the regulation, Prudential employees compressed the procedures to one contact during which customers were instructed to sign, but leave undated, all required forms. Subsequently, employees would insert dates in the documents in order to create an appearance that the two-step procedure had been followed and that there had been an appropriate interval between the steps during which information had been obtained from the issuer of the annuity proposed for replacement. In some instances when customers had dated documents despite instructions not to do so, Prudential employees would alter documents so that it appeared that Regulation No. 60 and the two-step procedure had been followed.

"The procedures required by New York State regulations exist to protect investors from unsuitable recommendations and hasty decisions and to arm investors with the information necessary to understand the complexities of variable annuity contracts as well as the cost and other implications of replacement," said Mary Schapiro, NASD Vice Chairman. "Because of the complexities of variable annuities, short-cutting the rules and regulations governing sales cannot and will not be tolerated."

During the three and one-half year period at issue, Prudential completed 906 annuity replacement sales subject to Regulation No. 60, and a substantial number of these involved violations of the regulation.

Additionally, during the same time period, certain Prudential employees prepared and used incorrect annuity performance illustrations in sales of annuity contracts.

Prudential discovered the violations in mid-2002 when a review of a replacement sale uncovered altered documents. Prudential promptly reported the matter to NASD and other regulators, and, in consultation with NASD, initiated a remediation program for all affected customers that will result in payments of more than \$9.5 million.

In concluding this settlement, Prudential Equity Group, Inc., and Prudential Investment Management Services LLC neither admitted nor denied the charges.